United Nations CMW/C/MOZ/QPR/1

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Distr.: General
18 May 2017

Original: English
English, French and Spanish only

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

List of issues prior to submission of the initial report of Mozambique*

Section I

A. General information

1. Please provide information on the domestic legal framework regarding the Convention, including:

(a) The rank of the Convention in domestic law and whether the Convention has direct effect or is part of the domestic law through implementing legislation;

(b) Relevant national legislation of the State party regarding the protection of migrant workers and members of their families, and on migration policies under the Convention;

(c) Measures taken by the State party to harmonize its legislation, in particular article 7 of the Migration Act (Lei da Migração), with the provisions of the Convention, including specific information on the different categories of migrant workers regulated by law;

(d) The existence and scope of bilateral and multilateral agreements concluded with other countries pertaining to the rights of migrant workers and members of their families under the Convention, in particular with Malawi, Portugal, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe. Please specify how these agreements protect migrant workers' rights in transit and destination countries, in particular with respect to detention, repatriation/expulsion and family reunification procedures, as well as with regard to labour rights and protection from child labour and labour exploitation. Please provide information on any measures taken to strengthen the protection of Mozambican migrant workers abroad, including by reviewing and amending bilateral agreements, including the 2015 Memorandum of Understanding relative to the 1964 Bilateral Labour Agreement between Mozambique and South Africa, and multilateral agreements, including with regard to gathering and sharing data among countries.

2. Please provide information on all policies and strategies relating to the rights of migrant workers and members of their families adopted by the State party, including information on specific time-bound and measurable goals and targets to effectively monitor progress in the implementation of the rights of migrant workers and members of their families in the State party. Please also provide information on resources allocated for

* Adopted by the Committee at its twenty-sixth session (3-13 April 2017).

GE.17-07980(E)

Please recycle

implementation and the results obtained. Please provide information on the status of the draft national action plan on mixed migration developed in 2016.

3. Please provide information on the government ministry or institution responsible for intergovernmental coordination on the implementation of the Convention in the State party, including information on the available staffing and resources as well as monitoring activities and follow-up procedures. Please also provide information on the mandate of that ministry or institution and resources allocated to it for promoting, protecting and fulfilling the rights of migrant workers and members of their families under the Convention.

4. Please provide qualitative information and statistical data, disaggregated by sex, age, nationality and migration status, on labour migration flows to and from the State party, including returns, on other labour migration-related issues and on children left behind by migrant parents. Please also provide qualitative and statistical data, or if precise data are not available, studies or estimates on migrant workers in an irregular situation in the State party and abroad, in particular those working in mining and commercial sectors. In addition, please provide information on the measures taken by the State party to establish a coherent and comparable system of data collection on those issues, including measures aimed at making the information public.

5. Please provide information on whether the State party has established an independent mechanism, such as a national human rights institution, with an explicit mandate to independently monitor the human rights situation within the State party, including the rights of all migrant workers and members of their families under the Convention. If so, please indicate whether the institution has been established in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Please also provide information on complaint mechanisms and other services, including helplines, offered by that institution, and whether that institution conducts visits to detention centres for migrant workers and shelters for Mozambican migrant workers following repatriation from countries of employment or transit. In addition, please provide information on the human, technical and financial resources made available to the institution as well as on awareness-raising activities by the State party among the general public and migrant workers, in both urban and rural areas, in particular on the services offered by the institution, including the right to file a complaint directly with the institution.

6. Please provide information on the steps taken by the State party to promote and publicize the Convention and to increase awareness and understanding of its provisions among the general public, migrant workers and members of their families, employers, teachers, health workers, government officials, including embassy and consular personnel, law enforcement officials, border police and the judiciary, civil society and the media. Please indicate whether the media promote the Convention and, if so, how they do so and the impact that engagement has on the situation of migrant workers coming to and departing from the State party.

7. Please describe measures taken by the State party to promote training programmes on the human rights of migrant workers and members of their families, including on gender sensitivity and the rights of the child, for government staff providing legal and consular assistance to nationals of the State party abroad dealing with migration and related issues, including discrimination, workplace abuse and exploitation, arrest, pretrial detention, immigration-related detention, imprisonment, expulsion and repatriation.

8. Please provide information on the cooperation and interaction between the State party, civil society organizations and other social partners working on the rights of migrant workers in relation to the implementation of the Convention. Please indicate whether and how the representatives of civil society organizations and other stakeholders are involved in the preparation of the replies to the present list of questions.

9. Please provide information on the existence of private employment agencies in the State party recruiting migrant workers to work abroad and on the laws, rules and regulations pertaining to private recruitment, in particular:

(a) Measures taken to provide infor[illegible] and training to migrant workers on their rights and obligations, as well as to protect a[illegible]busive employment situations;

(b) The role and responsibilities of [illegible]ment agencies and their joint responsibility with the overseas employer for cla[illegible]d liabilities that may arise in connection with the implementation of the empl[illegible]nt contract, including wages, disability compensation, repatriation and death, inclu[illegible]g repatriation of the bodies of deceased migrant workers;

(c) Whether recruitment agencies provide life, disability and/or workers' compensation insurance to migrant workers for work-related injuries and deaths;

(d) Information relating to the issuing and renewal of licences of such employment agencies;

(e) Information on complaints lodged against recruitment agencies, as well as information on labour inspections conducted, and penalties and sanctions imposed in cases of non-compliance with the law;

(f) Measures taken to strengthen mechanisms to regulate and control private employment agencies and to avoid situations where such agencies act as intermediaries for abusive foreign recruiters.

B. Information relating to the articles of the Convention

1. Part II of the Convention

Article 7

10. Please clarify whether national legislation, in particular the Constitution of Mozambique, the Migration Act and the Labour Code, ensures that all migrant workers and members of their families have the rights provided for in the Convention without distinction of any kind and whether it covers all the prohibited grounds of discrimination enumerated in the Convention (arts. 1 (1) and 7), including sex, language, national, ethnic or social origin, nationality, age, economic position, property, marital status and birth or other status. Please also provide information on all the measures taken by the State party to ensure non-discrimination, both in law and in practice. Please include information on the measures taken to ensure in practice article 4 (1) of the Migration Act, which grants migrant workers the same rights and guarantees as nationals.

2. Part III of the Convention

Articles 8-15

11. Please provide information on any cases identified in the State party of exploitation of migrant workers and members of their families, in both regular and irregular situations, in particular those working in mining and commercial sectors. Please also provide information on any cases identified in the State party of forced labour and sexual exploitation, including commercial sexual exploitation, involving migrant workers, in particular women, girls and boys, especially in the context of sex tourism, and on measures to prevent and combat these phenomena. In addition, please provide information on the measures taken to bring the national legislation into compliance with the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), and the ILO Abolition of Forced Labour Convention, 1957 (No. 105).

12. Please provide information on the measures taken by the State party to ensure that the rights of children in situations of international migration, in particular those who are unaccompanied and/or in an irregular situation or are transiting through the State party, are respected and that they are protected from all forms of exploitation. Please indicate the measures taken or envisaged by the State party to protect children in such situations against the worst forms of labour, including through the implementation of the ILO Minimum Age

Convention, 1973 (No. 138), and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and the strengthening of the labour inspection system.

13. Please provide detailed information on the measures taken to investigate complaints of harassment, corruption and abuse of authority by law enforcement officials, including allegations of extortion and arbitrary detention, with regard to migrant workers and members of their families. Please also indicate the number of complaints received and investigated in the past five years, the number of law enforcement officials that have been investigated, prosecuted and convicted in that regard, and specify the nature of the charges and sentences imposed. Please include information on reported cases of mistreatment of migrant workers by police forces, in particular against those from China, Somalia and Zimbabwe, as well as the measures taken on each occasion.

14. Please provide information on the application of the Trafficking in Persons Act No. 6/2008, detailing the measures taken to train law enforcement officials, in particular magistrates, prosecutors and police, the number of prosecutions initiated and the sentences issued. Please also provide information on cases involving child victims of trafficking.

Articles 16-22

15. Please clarify whether immigration-related offences are criminalized in the State party or if such matters constitute administrative infractions. Please describe the due process safeguards, including access to a lawyer and interpreter, that exist in situations of investigation, arrest, detention and expulsion of migrant workers and members of their families for criminal offences and administrative infractions, including immigration-related matters. Please also describe measures taken to ensure that the obligation contained in article 16 (7) of the Convention on contact with consular or diplomatic authorities of the State of origin of the detained migrant workers or members of their families is given effect in law and in practice. Please include information on specific due process safeguards in the administrative procedure for unaccompanied children in situations of migration, including the right to be heard and the right to a guardian.

16. Please indicate the legislative and other measures that have been taken by the State party to ensure the right to liberty of migrant workers and their families in the context of migration-related administrative procedures, including in respect of entry, residence and expulsion. Please provide information, including statistical data, on alternatives to detention for immigration-related matters in the State party. Please indicate if the State party detains migrant workers and members of their families for immigration-related matters. If so, please provide detailed information on migration detention centres, conditions of detention for migrant workers and members of their families, including its length, and efforts to improve those conditions and indicate which authorities are responsible for detention and for the management of immigration detention facilities, including the role of the judiciary. Please also include information on whether:

(a) Persons detained for immigration reasons are held in separate facilities or together with convicted persons or persons awaiting trial;

(b) Women detained for immigration reasons are held separately from men who are not family members or partners, and are supervised by female personnel;

(c) Specific alternatives to detention exist for unaccompanied children and families with children;

(d) Unaccompanied children and families with children can be detained for immigration-related matters and, if so, please provide detailed information on the facilities where they are detained and the conditions of such facilities, including in respect of child-protection measures and the authorities in charge of such facilities, as well as data on detained children disaggregated by year, sex, age, nationality and length of stay.

17. Please provide up-to-date information, including statistical data disaggregated by year, sex, age and nationality, on migrant workers and their families who are in an irregular situation and have been, or are in the process of being, expelled. Please indicate whether collective expulsion is prohibited by law in the State party. Please indicate whether migrant

workers can challenge expulsion orders and whether such remedies have a suspensive effect in accordance with article 22 of the Convention.

18. Please provide information on the measures that the State party has implemented to guarantee the right to family life, in particular the right of children in situations of migration to family life and not to be separated from their parents in cases where an expulsion order has been issued against the parents.

19. Please provide information on border governance measures, in particular with respect to procedures applicable to migrant workers and asylum seekers arriving at the international borders of the State party, including in relation to reception facilities, and how the State party processes protection claims to ensure that it acts in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

Articles 23

20. Please provide detailed information on the consular services provided by the State party to Mozambicans working abroad, including those in an irregular situation and particularly in cases of abuse, arrest, detention and expulsion, including specific initiatives developed for those migrants subjected to deportation from South Africa. Please provide information on the policies and practices of the State party regarding assistance to its nationals working abroad, including the main countries of employment. Please also provide information, including specific examples, on the activities and services of embassies and consulates to Mozambican migrant workers and members of their families in the countries of employment, such as those directed to:

(a) Protecting them from xenophobia, including xenophobic violence, and promoting their access to justice, remedies and reparations;

(b) Protecting the labour rights of Mozambican mine workers in South Africa.

Articles 25-30

21. Please indicate the legal and labour protection and enforcement mechanisms that are in place to ensure that migrant workers, including migrant women, especially in mining and commercial sectors, enjoy treatment not less favourable than that which applies to nationals in respect of remuneration and conditions of work.

22. Please indicate whether national labour laws and regulations relating to remuneration and conditions of work (for example, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of work contract and minimum wage) are in full compliance with the ILO Equal Remuneration Convention, 1951 (No. 100), and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and whether they apply on an equal basis to migrant workers, in both regular and irregular situations.

23. Please provide information on the measures taken to ensure that children of migrant workers have full access to education, regardless of their or their parents' migration status, and on whether firewalls are in place to ensure that schools are not obliged to and do not report the immigration status of children to the authorities.

24. Please provide information on the measures taken by the State party to ensure, in law and in practice, that all migrant workers and members of their families, in particular children, have access to adequate medical care, including urgent medical care, regardless of their migration status, and on whether firewalls are in place to ensure that health facilities are not obliged to and do not report their immigration status to the authorities. Please provide information on access to HIV/AIDS treatment and sexual and reproductive health services for migrant women, in particular in the provinces of Tete and Sofala.

25. Please provide information on the measures taken by the State party to ensure the right of children of Mozambican migrant workers abroad, including children of migrant workers who are undocumented or in an irregular situation, to be registered at birth and to have their nationality of origin recognized in law and in practice. Please also provide

information on the measures taken to ensure the birth registration of children of migrant workers in the State party.

Articles 31-33

26. Please provide information on measures taken to ensure that, upon termination of their stay in the State party, migrant workers and members of their families have the right to transfer their earnings and savings and, in accordance with the applicable legislation, their personal effects and belongings, from the State of employment to the State of origin. Please provide information on the measures taken to facilitate the transfer of private funds, especially by reducing the cost of transactions.

27. Please describe the measures taken to ensure that migrant workers arriving in, or preparing to come to, the State party have access to clear information on immigration procedures, including full information on the conditions applicable to their admission, stay and remunerated activities in which they may engage, as well as applicable legislation.

3. Part IV of the Convention

Article 37

28. Please provide information on pre-departure programmes for the State party's nationals considering emigration, including information on their rights and obligations in the State of employment, and for which States such information is provided. Please indicate which government institution is responsible for providing such information and if any coordinated policies, programmes or legislation have been developed to ensure transparency and accountability in that process.

Article 40

29. Please provide information on the measures taken to guarantee to migrant workers and members of their families the right to form, and be part of the leadership of, associations and trade unions, in accordance with article 40 of the Convention and parts I and II of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Article 41

30. Please provide information on the measures taken by the State party to review its legal framework, as well as on other steps, to facilitate the exercise of voting rights by migrant workers and members of their families of the State party residing abroad, in particular:

(a) The right to participate in public affairs in the State party;

(b) The right to exercise their voting rights in the State party;

(c) The right to be elected to public office in the State party.

4. Part V of the Convention

Articles 58-63

31. Please provide information on measures aimed at improving the situation of frontier workers and at including in national legislation the definition of frontier workers, as well as on specific provisions related to the protection of their rights, in accordance with article 58 of the Convention.

5. Part VI of the Convention

Article 64

32. Please provide information on bilateral and multilateral agreements entered into by the State party and other measures taken, including consultations and cooperation with

other States, to promote sound, equitable and humane conditions in connection with international migration of migrant workers and members of their families, and in particular measures aimed at enhancing legal migration channels. Please provide information on the measures taken to address irregular migration of nationals of the State party, including children, such as campaigns aimed at countering misleading information relating to emigration and raising awareness among nationals of the State party of the dangers of irregular migration, and measures to address its root causes.

Article 67

33. Please provide information on the measures taken to promote conditions that facilitate the reception and reintegration of migrant workers and members of their families upon their return to the State party, including the recognition of occupational qualifications acquired abroad. Please also provide information on the measures taken by the State party to ensure that upon their return Mozambican migrant workers and members of their families have the right to transfer their earnings and savings and, in accordance with the applicable legislation, their personal effects and belongings.

Article 68

34. Please provide information on the measures taken by the State party, including the adoption of specific legislation and policies and through international, regional and bilateral cooperation with countries of origin, transit and destination, and the allocation of corresponding human and financial resources, to prevent and combat trafficking in persons, in particular women and children, and to ensure the prosecution, conviction and punishment of traffickers in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000.

35. Please provide information on the measures taken to assist and protect victims of trafficking, such as protecting their identity and providing physical, psychological and social recovery, and to ensure their access to justice and legal remedies. Please also provide information on the efforts made to systematically compile data on trafficking in persons.

Article 69

36. Please provide information on the measures taken to ensure that migrant workers and members of their families in an irregular situation in the State party have the possibility of regularizing their situation in accordance with the provisions of article 69 of the Convention. Please describe the efforts made, including through bilateral and multilateral agreements, to promote the regularization of migrant workers who are nationals of the State party living abroad.

Section II

37. The Committee invites the State party to provide information (in no more than three pages) regarding the protection of migrant workers and members of their families with respect to:

(a) Bills or laws, and their respective regulations;

(b) Institutions (and their mandates) or institutional reforms;

(c) Policies, programmes and action plans covering migration, and their scope and financing, including measures to implement commitments set out in the 2016 New York Declaration for Refugees and Migrants;

(d) Recent ratifications of human rights instruments and other relevant instruments, including the ILO Migration for Employment Convention (Revised), 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the ILO Domestic Workers Convention, 2011 (No. 189);

(e) Recent comprehensive studies on the situation of migrant workers and members of their families.

Section III

Data, official estimates, statistics and other information, if available

38. Please provide updated statistical data, disaggregated by year, age, sex and nationality, and qualitative information for the past three years (unless indicated otherwise) on:

(a) The volume and nature of migratory flows to and from the State party since the Convention entered into force in the State party;

(b) Migrant workers and members of their families in detention in the State party, and migrant workers and members of their families who are nationals of the State party and are detained abroad in States of employment or transit, and whether such detention is immigration-related;

(c) Migrant workers and members of their families who have been expelled from the State party;

(d) The number of non-accompanied migrant children or migrant children separated from their parents in the State party;

(e) Remittances received from nationals of the State party working abroad;

(f) Reported cases of trafficking in and smuggling of migrant workers and members of their families, investigations, prosecutions and sentences imposed on perpetrators, disaggregated by offence;

(g) Legal assistance services provided to migrant workers and members of their families in the State party and to nationals working abroad or in transit through third States.

39. Please provide any additional information on any important developments and measures to implement the Convention relating to the protection of the rights of migrant workers and members of their families that the State party considers a priority, including whether it envisages making the declaration under article 76 of the Convention recognizing the competence of the Committee to receive and consider State-to-State communications, and/or the declaration under article 77 of the Convention recognizing the competence of the Committee to receive and consider individual communications.

40. Please submit an updated core document in line with the harmonized guidelines on reporting (HRI/GEN/2/Rev.6). In accordance with General Assembly resolution 68/268, paragraph 16, the common core document should not exceed 42,400 words.